

MEMORANDUM

DATE: March 27, 2008

TO: Ms. Sharon L. Summers, DMMA
Planning and Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 1191 [Proposed Medicaid Vehicle Resource Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposed changes to the treatment of vehicles as resources under the Medicaid long-term care program. The regulations were published as 11 DE Reg. 1191 in the March 1, 2008 issue of the Register of Regulations. In general, the amendments are consistent with the attached federal regulations, 20 C.F.R. §§416.1218 and 416.1201). However, SCPD has three (3) recommendations.

First, the grammar in §20330.1 is problematic. SCPD recommends the following substitute (with changes underlined):

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a resource if it:

- Is owned by an eligible individual/spouse; or
- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

Second, the federal regulation [20 C.F.R. §416.1218(b)(2)] specifically recites that automobiles not excluded under 20 C.F.R. §416.1218(b)(1) are "non-liquid resources." Although 16 DE Admin Code 20300.2 "captures" this concept, it would be preferable to clarify this status in the proposed §§20310.5 and 20330.1. This could be achieved by inserting "non-liquid" prior to "resource" in both sections.

Third, proposed §20330.1 contains the following benchmark for valuation of an auto's equity value: "The equity value is the price it can reasonably sell for on the open market minus any encumbrances." The federal standard is more restrictive by limiting equity value to "the price that an item can reasonably be expected to sell for on the open market in the particular geographical area involved; minus...(a)ny encumbrances. [emphasis supplied] See attached 20 C.F.R. 416.1201(c)(2).

The federal regulation would not allow a valuation based on an eBay, national, or international

internet sale. The DMMA regulation would allow valuation based on a non-Delaware market. At a minimum, SCPD recommends the adoption of the following revised sentence: “The equity value is the price it can reasonably sell for on the open market in Delaware minus any encumbrances.”

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Harry Hill
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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